Supreme Court, U.S.
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No. 90-1150

IN THE
Supreme Court of The United States
OCTOBER TERM, 1990

DONALD J. WILLY,

Petitioner,

versus

THE COASTAL CORPORATION, ET AL.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

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RESPONDENTS' BRIEF IN OPPOSITION

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February 1991

LIST OF ALL PARTIES

Petitioner Donald J. Willy was the plaintiff in the district court and the appellant in the court of appeals.

Respondents in this Court are The Coastal Corporation, Coastal States Management Corporation, James R. Paul, George L. Brundrett, Charles F. Jones, William L. Dunker, and E.C. (Bud) Simpson.

Pursuant to Supreme Court Rule 29.1, Respondents further state that Jayhawk Pipeline Corporation, Great Lakes Gas Transmission Company, and Aruba Refinery Rehabilitation Company, N.V. are non-wholly owned corporate subsidiaries of The Coastal Corporation.

TABLE OF CONTENTS

	Page
STATEMENT OF THE CASE	1
SUMMARY OF THE ARGUMENT	4
REASONS FOR DENIAL OF THE PETITION	5
I. The Fifth Circuit's exercise of jurisdiction over the Rule 11 aspects of this case was wholly consistent with Article III of the Constitution, the prior decisions of this Court, and the decisions of the other courts of appeals	5
II. Neither the district court nor the Fifth Circuit abused its discretion by imposing joint and several monetary sanctions of $19,307 on Willy and his counsel	9
A. Rule 11 specifically provides for a joint sanction against both counsel and client, and the facts of this case justified such an award	9
B. The amount of the sanction imposed was well within the discretion of the district court	11
CONCLUSION	12

TABLE OF AUTHORITIES

Cases:	Page
Cooter & Gell v. *Hartmarx Corp.*, ____ U.S. ____, 110 S.Ct. 2447, 110 L.Ed.2d 359 (1990)	4,5,6,11
Davis v. *Cluet, Peabody & Co.*, 667 F.2d 873, *reh'g den.* 673 F.2d 1342 (11th Cir. 1982)	7,8
Franchise Tax Bd. v. *Const. Laborers Vac. Trust*, 463 U.S. 1, 103 S.Ct. 2840, 77 L.Ed.2d 420 (1983)	2
Greenberg v. *Hilton Intern. Co.*, 870 F.2d 926, *on reh'g*, 875 F.2d 39 (2d Cir. 1989)	10
In re Willy, 831 F.2d 545 (5th Cir. 1987)	1
Kurkowski v. *Volcker*, 819 F.2d 201 (8th Cir. 1987)	6,7
Mashak v. *Hacker*, 303 F.2d 526 (7th Cir. 1962)	6
Merrell Dow Pharmaceuticals, Inc. v. *Thompson*, 478 U.S. 804, 106 S.Ct. 3229, 92 L.Ed.2d 650 (1986)	3
Mathig v. *Brant Point Nantucket, Inc.*, 838 F.2d 600 (1st Cir. 1988)	6,9
News-Texan, Inc. v. *City of Garland, Tex.*, 814 F.2d 216 (5th Cir. 1987)	7
O'Malley v. *New York City Transit Authority*, 896 F.2d 704 (2d Cir. 1990)	10
Orange Production Credit Assoc. v. *Frontline Ventures, Ltd.*, 792 F.2d 797 (9th Cir. 1986)	7
Roadway Express, Inc. v. *Piper*, 477 U.S. 752, 100 S.Ct. 2455, 65 L.Ed.2d 488 (1980)	5,6

	Page
S.A. Auto Lube, Inc. v. *Jiffy Lube Intern., Inc.*, 131 F.R.D. 547 (N.D.Ill. 1990)	12
S.A. Auto Lube, Inc. v. *Jiffy Lube Intern., Inc.*, 842 F.2d 946 (7th Cir. 1988)	7
Schering Corp. v. *Vitarine Pharmaceuticals, Inc.*, 889 F.2d 490 (3rd Cir. 1989)	6,7,8
Szabo Food Service, Inc., v. *Canteen Corp.*, 823 F.2d 1073 (7th Cir. 1987), *cert. dism'd* 485 U.S. 901, 108 S.Ct. 1101, 99 L.Ed.2d 229 (1988)	7,8
Thomas v. *Capital Security Services, Inc.*, 836 F.2d 866 (5th Cir. 1988)	3,11
Trohimovich v. *Commissioner*, 776 F.2d 873 (9th Cir. 1985)	7
Vatican Shrimp Co., Inc. v. *Solis*, 820 F.2d 674 (5th Cir.), *cert. den.* 484 U.S. 953, 108 S.Ct. 345 (1987)	7
Willy v. *Coastal Corp.*, 647 F.Supp. 116 (S.D.Tex. 1986)	2
Willy v. *Coastal Corp.*, 855 F.2d 1160 (5th Cir. 1988)	3
Willy v. *Coastal Corp.*, 915 F.2d 965, *reh'g den.* 920 F.2d 931 (5th Cir. 1990)	4
Wojan v. *General Motors Corp.*, 851 F.2d 969 (7th Cir. 1988)	7,9
Zambrano v. *City of Tustin*, 885 F.2d 1473 (9th Cir. 1989)	8
Constitution:	
Art. III, Constitution of the United States	5

	Page
Statutes:	
18 U.S.C. §401	6
28 U.S.C. §1919	6
28 U.S.C. §2071	8
Federal Rules:	
Rule 11, F.R. Civ.P.	*passim*
Rule 12(b)(6), F.R. Civ.P.	2
Rule 41(a), F.R. Civ.P.	6
Miscellaneous:	
1983 Notes of Advisory Committee on Rules, F.R. Civ.P., R.11	6

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RESPONDENTS' BRIEF IN OPPOSITION

STATEMENT OF THE CASE

In 1984, a subsidiary of The Coastal Corporation terminated the employment of in-house environmental attorney Donald J. Willy. Willy, through fellow attorney George A. Young, subsequently filed an action against the two corporate defendants and five individuals in Texas state court, alleging that the termination of his services as an attorney constituted a tortious wrongful discharge.[1] (R.7:1096). Willy's state court complaint was replete

[1]Prior to the filing of his state court action, Willy had instituted federal administrative proceedings against Coastal under the "whistleblower" provisions of a host of federal environmental statutes. *See In Re Willy*, 831 F.2d 545 (5th Cir. 1987). During the pendency of the present action, he also filed a separate federal lawsuit against Coastal and some *eighty* of its subsidiaries, directors, officers, employees, and attorneys alleging violations of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §1961-69. (R.2:84).

with references to federal environmental and securities statutes that Coastal allegedly had violated or sought to violate. (R.7: 1098, 1100-1105). Viewing those allegations as an essential and substantial element of Willy's claims, Coastal removed the action to the United States District Court for the Southern District of Texas under the authority of this Court's decision in *Franchise Tax Board* v. *Construction Laborers Vacation Trust*, 463 U.S. 1, 103 S.Ct. 2841, 77 L.Ed.2d 420 (1983). (R.7:1092). Two different judges of the district court found removal to have been proper and denied Willy's request for remand. (R.6:877;9:6).

Following removal, Willy and Young embarked upon a course of conduct that the district court ultimately characterized as "inexcusable." (R.4:382). The litany of offenses committed by Willy and Young, both of whom attended every hearing and conference, included the repeated oral and written citation of a non-existent rule of evidence (R.2:80), the deceptive misquotation and discussion of a controlling disciplinary rule (R.2:84), the filing of confusing and misleading pleadings (R.2:83), the improper assertion of conflict of interest claims against Coastal's counsel (R.2:83), the insertion in a later pleading of language previously stricken by the court as irrelevant and inflammatory (R.2:83), and, finally, the filing of a rambling 110-page brief in support of a motion for partial summary judgment (R.5:609) accompanied by some 1200 pages of unnumbered, unindexed, and largely irrelevant documents, all of which were purportedly rendered admissible by an inadequate affidavit personally signed by Willy. (Exs.,Vol.I,1). Willy was also present when Young advised the court of their intent to take sixty depositions in the case, which the trial court ultimately concluded were part of a plan of harrassment by Willy and his counsel. (R.10:29;2:84).

In an order dated November 12, 1986, the district court granted a motion by Coastal to dismiss Willy's wrongful discharge claim under Rule 12(b)(6). *See Willy v. Coastal Corp.*, 647 F. Supp. 116 (S.D.Tex. 1986) (Texas disciplinary rules require an

attorney to withdraw upon dismissal, and do not permit an action for tortious wrongful discharge). (R.3:231). On the same date, in response to a motion by Coastal, the district court also entered a separate order under Rule 11 imposing sanctions on Young and Willy in the joint and several amount of $22,625.00. (R.4:380). (A-6).[2] That order cited several examples of the Rule 11 violations that had been committed, and found Young and Willy's conduct to have been "a conscious and wanton affront to the judicial process, [the district court], and opposing counsel." (R.4:381).

Willy, through new counsel, appealed both orders of the district court to the United States Court of Appeals for the Fifth Circuit. On September 29, 1988, the Fifth Circuit, relying in large part on this Court's decision in *Merrell Dow Pharmaceuticals, Inc.* v. *Thompson*, 478 U.S. 804, 106 S.Ct. 3229, 92 L.Ed.2d 650 (1986), issued a lengthy opinion wherein it concluded that the district court had lacked subject matter jurisdiction over the merits of the case. *Willy* v. *Coastal Corp.*, 855 F.2d 1160 (5th Cir. 1988). (A-9). The Fifth Circuit therefore reversed the substantive dismissal of Willy's claims and ordered those claims remanded to state court; but the Court also specifically ruled that jurisdiction over the Rule 11 aspects of the case survived despite the absence of subject matter jurisdiction over the merits of Willy's claims. Indeed, in his reply brief, Willy had conceded the existence of such jurisdiction. The Fifth Circuit further found that the actions of Young and Willy were "precisely the sort of conduct" prohibited by Rule 11, and proceeded to find the type of sanction imposed appropriate. (A-36). The court nevertheless remanded the Rule 11 aspects of the case to the district court for more specific findings as to the amount of the award in accordance with the intervening *en banc* decision in *Thomas* v. *Capital Security Services, Inc.*, 836 F.2d 866 (5th Cir. 1988).

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[2]The designation "A- " refers to pages of the Appendix to Willy's Petition.

On remand, the district court accepted additional material from the parties and heard further oral argument pertaining to the sanction award. (R.11). On April 17, 1989, the district court issued a revised order for sanctions imposing a joint and several sanction of $19,307 against Young and Willy. (R.2:80)(A-40). The revised order contained specific findings as to the precise fees incurred by Coastal as a result of Willy's violations of Rule 11, and elaborated on the nature of those violations and on Coastal's corresponding efforts to mitigate its fees. Willy once again appealed the sanction order of the district court to the Fifth Circuit.[3]

On October 26, 1990, a new panel of the Fifth Circuit affirmed the district court's April 17, 1989 sanction award in its entirety. *Willy* v. *Coastal Corp.*, 915 F.2d 965 (5th Cir. 1990) (A-48). The court, citing this Court's decision in *Cooter & Gell* v. *Hartmarx Corp.*, ____ U.S. ____, 110 S.Ct. 2447, 100 L.Ed.2d 359 (1990), specifically ruled again that both it and the district court retained jurisdiction over the Rule 11 aspects of the case despite the absence of subject matter jurisdiction over the merits. (A-50). The Fifth Circuit deferred to the prior panel's ruling approving the type of sanction imposed, and, reviewing the findings of the district court, found "ample support" for the imposition of joint and several sanctions in the amount of $19,307. (A-54). On January 17, 1991, Willy filed a Petition for Writ of Certiorari.

SUMMARY OF THE ARGUMENT

The jurisdictional issue raised by Willy has been resolved against him in numerous recent decisions, and there is no conflict among the circuits. The Fifth Circuit's decision follows the prior decisions of this Court and the other circuit courts in finding that

[3]The other sanctioned party, George A. Young, did not appeal.

the inherent power of a federal court to control its own proceedings by imposing Rule 11 sanctions is not dependent on subject matter jurisdiction over the merits. Moreover, a decision by the Court in this case would be of little precedential value because it would by necessity center upon the unique facts presented, which are unlikely to recur.

Rule 11 specifically permits the imposition of joint and several sanctions against both client and counsel. Neither the district court nor the Fifth Circuit abused its discretion by imposing such a sanction here because Willy, who is an experienced attorney, personally violated Rule 11 and actively supervised the Rule 11 violations of the fellow attorney who represented him. Moreover, the amount of the sanction imposed was reasonable in light of the harm caused by Willy's abusive conduct and the need to deter such conduct in the future.

REASONS FOR DENIAL OF WILLY'S PETITION

The issues presented by Willy's Petition have been definitively resolved by prior case law, which involves no conflicts among the circuits, are unlikely to recur with any frequency, and hinge primarily upon the unique facts of this case. As such, this matter does not warrant consideration by this Court.

I. The Fifth Circuit's exercise of jurisdiction over the Rule 11 aspects of this case was wholly consistent with Article III of the Constitution, the prior decisions of this Court, and the decisions of the other courts of appeals.

The Fifth Circuit correctly concluded that the district court retained jurisdiction over the Rule 11 issues arising from this case despite the absence of removal jurisdiction. Relying on *Roadway Express, Inc.* v. *Piper*, 447 U.S. 752, 100 S.Ct. 2455, 65 L.Ed. 2d 488 (1980), and on this Court's recent decision in *Cooter & Gell* v. *Hartmarx Corp.*, ____ U.S. ____, 110 S.Ct. 2447, 100 L.Ed.2d

359 (1990), the Fifth Circuit concluded that the ability to impose sanctions under Rule 11 is among those inherent powers necessary to the administration of federal justice. Indeed, the drafters of the 1983 amendment to Rule 11 specifically premised the amendment upon the inherent judicial power "necessary to the exercise of all others" that was identified in *Roadway Express. See* 1983 Notes of Advisory Committee on Rules; *accord Kurkowski* v. *Volcker,* 819 F.2d 201, 203 (8th Cir. 1987) (basis for Rule 11 jurisdiction is the court's "inherent authority over the cases and parties before it").

Just this past term, this Court held in *Cooter & Gell* that the voluntary dismissal of an action pursuant to Rule 41(a) of the Federal Rules of Civil Procedure does not preclude the subsequent imposition of sanctions under Rule 11, even though the court technically loses jurisdiction over the case upon the dismissal. In so finding, the Court explained that,

> Like the imposition of costs, attorneys' fees, and contempt sanctions, the imposition of a Rule 11 sanction is not a judgment on the merits of an action. Rather, it requires the determination of a collateral issue: whether the attorney has abused the judicial process, and, if so, what sanction would be appropriate.

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110 S.Ct. at 2456. *See* 28 U.S.C. §1919 (providing for imposition of costs after a dismissal for want of jurisdiction); *Mashak* v. *Hacker,* 303 F.2d 526 (7th Cir. 1962) (court has jurisdiction to impose costs even absent jurisdiction to entertain the action); 18 U.S.C. §401 (criminal contempt). Under the *Cooter & Gell* rationale, the Rule 11 collateral power to sanction similarly endures regardless of the court's ultimate findings as to subject matter jurisdiction over the merits. *See Muthig* v. *Brant Point Nantucket, Inc.,* 838 F.2d 600, 604 (1st Cir. 1988) (use of the term "sanction" in Rule 11 suggests a contempt power analogy); *Schering Corp.* v. *Vitarine Pharmaceuticals, Inc.,* 889 F.2d 490, 495 (3d Cir.

1989) ("The analogy of Rule 11 sanctions to contempt proceedings is apt. Both are designed to deter misbehavior before the Court.").

As Willy's own citations indicate, the decisions of other courts of appeals and the prior decisions of the Fifth Circuit are in full accord with the decision rendered in this matter. *See, e.g., Schering Corp.* v. *Vitarine Pharmaceuticals, Inc., supra; Wojan* v. *General Motors Corp.,* 851 F.2d 969 (7th Cir. 1988); *S.A. Auto Lube, Inc.* v. *Jiffy Lube Intern., Inc.,* 842 F.2d 946 (7th Cir. 1988) (imposing Rule 11 sanctions following improper removal); *Szabo Food Service, Inc.* v. *Canteen Corp.,* 823 F.2d 1073 (7th Cir. 1987); *Vatican Shrimp Co.* v. *Solis,* 820 F.2d 674 (5th Cir.), *cert. den.* 484 U.S. 953, 108 S.Ct. 345 (1987); *News-Texan, Inc.* v. *City of Garland,* 814 F.2d 216 (5th Cir. 1987); *Kurkowski* v. *Volcker,* 819 F.2d 201 (8th Cir. 1987); *Orange Production Credit Assoc.* v. *Frontline Ventures, Ltd.,* 792 F.2d 797 (9th Cir. 1986); *Trohimovich* v. *Commissioner,* 776 F.2d 873 (9th Cir. 1985).

Willy's suggestion of a conflict among the circuits based on the Eleventh Circuit's decision in *Davis* v. *Cluet, Peabody & Co.,* 667 F.2d 1371 (11th Cir. 1982), is simply wrong. In *Davis,* the district court, citing the plaintiff's refusal to follow procedural rules and court orders as well as the "apparent merit" of the defendant's motion for summary judgment, had dismissed the plaintiff's claims. On appeal, the Eleventh Circuit reversed, concluding that the district court had lacked subject matter jurisdiction and that it was inappropriate "for the district court to have imposed the sanction of dismissal, *thus disposing of the proceeding,* even though it had no authority to rule on the merits in the first place." 667 F.2d at 1374 (emphasis added). The Eleventh Circuit further explained that,

> . . . although we realize that the court had already once taxed costs against plaintiff's counsel for their improper conduct, we believe that a remedy more appropriate than dismissal, which penalized the parties themselves, would have

> been further sanctions against counsel, which would have penalized the persons actually responsible for the improper conduct.

667 F.2d at 1374 n.9. *Davis* is thus consistent with the decisions of the Third, Fifth, Seventh, Eighth, and Ninth Circuits. It merely found inappropriate the sanction of dismissal where it constituted a judgment on the merits over which the court lacked jurisdiction. The power to impose monetary sanctions, which in no way impair claims on the merits, was upheld.

As Willy admitted below, a federal court always has "jurisdiction to determine jurisdiction." Logically, a court retains jurisdiction over all matters before it until a final resolution is made on appeal. *Schering Corp.* v. *Vitarine Pharmaceuticals, Inc.*, *supra* at 495 (court retains power to "engage in the usual judicial acts" even absent subject matter jurisdiction). Otherwise, once a district court erroneously decides a difficult issue of subject matter jurisdiction, the party opposing jurisdiction may say to the district court, "Because you have made an erroneous legal decision, I may now harass my opponent and flood your court with endless reams of factually and legally baseless pleadings, all with total immunity from Rule 11 sanctions." *See Szabo Food Service, Inc.* v. *Canteen Corp.*, 823 F.2d 1073, 1079 (7th Cir. 1987) (citing hypothetical example of an attorney punching a judge, taking a voluntary dismissal, and claiming immunity for his actions based on the court's lack of jurisdiction). Neither Congress nor the framers of the Constitution can be charged with creating such an opportunity to demean a federal court or the judicial process. To the contrary, Congress enacted the Rules Enabling Act to allow the courts to promulgate those rules necessary to control their own proceedings, and thereby to preclude the result urged by Willy. 28 U.S.C. §2071; *Zambrano* v. *City of Tustin*, 885 F.2d 1473, 1479 (9th Cir. 1989) ("The authority of a district court to sanction attorneys derives not just from an inherent *judicial*

power but from the *legislative* grant of authority to promulgate rules.").[4] The ability of a federal court to regulate the conduct of the proceedings before it does not, and cannot, depend on the jurisdictional posture of the merits of the case. "A court may have power to do some things but not others, and the use of 'lack of jurisdiction' to describe the things it may not do does not mean that the court is out of business." *Wojan* v. *General Motors Corp.*, 851 F.2d 969, 972 (7th Cir. 1988). Willy confuses subject matter jurisdiction over the merits of a case with the court's necessary and inherent power to regulate its own proceedings, as reflected in Rule 11; but his confusion is not warranted by the prior decisions of this Court or of the circuit courts. The jurisdictional issue raised by Willy has been uniformly resolved against him in numerous recent cases, and a revisitation of that issue by the Court would serve no purpose.

II. Neither the district court nor the Fifth Circuit abused its discretion by imposing joint and several monetary sanctions of $19,307 on Willy and his counsel.

A. Rule 11 specifically provides for a joint sanction against both counsel and client, and the facts of this case justified such an award.

Contrary to Willy's assertion, this case presents no issue of vicarious liability. This is not a case in which a district court imposed sanctions on an innocent or unsophisticated party based solely on the shoddy practice of his representative. *Cf. Muthig* v. *Brant Point Nantucket, Inc.*, 838 F.2d 600, 607 (1st Cir. 1988)

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[4]Taken to its extreme, Willy's argument would render constitutionally invalid many local rules, including those pertaining to the conduct of parties, counsel, or spectators in a federal courtroom, if the court is ultimately deemed to lack subject matter jurisdiction over the matter in progress. Thus, according to Willy, the enforceability of local rules prohibiting firearms or cameras in the courtroom would depend upon appellate affirmation of the court's subject matter jurisdiction.

(sanction against clients not warranted because "as non-lawyers" they did not understand claims).

Willy is an experienced practicing lawyer. He specialized in the complex field of environmental law, and, as a member of the bar, was charged with at least a basic knowledge of litigation and procedure. Willy personally attended every hearing and conference before the district court. *Cf. Greenberg* v. *Hilton Intern. Co.*, 870 F.2d 926, 939 (2d Cir. 1989) (no sanction where client lacked actual knowledge of wrongful conduct by counsel). (*E.g.*, R.10:3). Indeed, the district court found it necessary on one occasion to chastise Willy in open court because of his disruptive efforts to dictate the oral argument of the attorney who replaced Young. (R.8:5,6,8). Willy was present in court when Young announced an intention to take sixty depositions (R.10:29), and Willy does not deny that he authorized the filing of an abusive RICO action against some eighty Coastal affiliates, directors, officers, and attorneys. Moreover, Willy himself signed an affidavit that was one of the papers upon which the district court based its Rule 11 findings. (Exs., Vol.I,1).

Rule 11 specifically provides for the imposition of sanctions upon the person who signs a pleading, "a represented party, or both." As noted by the Fifth Circuit below and by the Second Circuit in *O'Malley* v. *New York City Transit Authority*, 896 F.2d 704 (2d Cir. 1990), such sanctions are particularly appropriate when the represented party is also a practicing attorney.[5] Since Willy is an experienced lawyer who closely oversaw the work of his hired counsel, this case presents no basis for reviewing the exercise of discretion by the district court, affirmed by the Fifth Circuit, in imposing joint and several liability on a client and his attorney under Rule 11.

[5]In *O'Malley*, the court stated that "[t]he circumstances here differ from the norm in that the party who instigated the action is also a practicing attorney. In view of [his] presumed familiarity with the law, very likely he is as much at fault as his attorney in bringing this groundless RICO action." 896 F.2d at 710.

B. The amount of the sanction imposed was well within the discretion of the district court.

As a secondary issue, Willy contends that the district court abused its discretion by imposing a monetary sanction in the amount of $19,307. Again, Willy's contentions focus on the unique facts of this case, and would render a decision by the Court of little precedential value.

The district court properly determined the amount of its sanction award on the basis of the amounts expended by Coastal in responding to Willy's abusive filings that violated Rule 11. This is a normal basis for calculating Rule 11 sanctions. *E.g., Thomas* v. *Capital Security Services, Inc.*, 836 F.2d 866 (5th Cir. 1988).

Willy's repeated reference to Coastal as "an $8 billion corporation" which was being "rewarded" for mistakenly removing the case to federal court simply has no bearing on whether the amount of the sanction is appropriate to deter future abuses by Willy.[6] To hold that Coastal's understandable effort to bring to federal court a case involving numerous complex federal statutes somehow absolved Willy of all responsibility under Rule 11, and forced Coastal and the court to endure his "inexcusable" conduct without remedy, would be to ignore the deterrent purpose of the Rule. *See Cooter & Gell*, 110 S.Ct. at 2454 ("[A]ny interpretation [of Rule 11] must give effect to the rule's central goal of deterrence"). The court did not "reward" Coastal; the court punished Willy by ordering him to reimburse Coastal for the harm caused by his wrongful actions. Moreover, the district court and the Fifth Circuit understandably looked with skepticism on Willy's belated plea that the sanctions awarded would "effectively bankrupt" him. The sanction imposed was reasonable in light of the earnings potential of an experienced attorney, especially one who

[6]Willy's repeated reference to Coastal's financial status also fails to take into account the presence of the five individual defendants named by Willy.

incurred more than $40,000 in attorney's fees (A-46) solely to file the ponderous brief supporting partial summary judgment that led in part to the sanctions. *S.A. Auto Lube, Inc.*, v. *Jiffy Lube Intern, Inc.*, 131 F.R.D. 547 (N.D. Ill. 1990) (rejecting an attorney's plea that the amount of the sanction award was too high). The court below did not abuse its discretion by rejecting Willy's plea as to the respective financial positions of the parties. In any event, his assertions are too fact specific to justify review by this Court.

CONCLUSION

The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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